"(2) In any case —

* * *

(c) where such payment was made in occupation currency to a Custodian or liquidation officer in respect of a pre-occupation capital debt exceeding two hundred and fifty dollars in amount except where payment as aforesaid was caused by duress or coercion;

such payment shall be revalued in accordance with the scale set out in the Schedule to this Ordinance and shall be a valid discharge of such debt only to the extent of such revaluation."

The expression "duress or coercion" is defined for the purposes of section 4 in sub-section (5) which, insofar as it is relevant to the question before me, reads as follows :—

"(5) For the purposes of this section "duress or coercion" means force, injury or detriment applied or caused, or threat of force, injury or detriment offered, to the debtor by the creditor or his agent or an official of, or person acting on behalf of, the Occupying Power, which, in the opinion of the Court, was of such a nature as to render a payment an involuntary act.

In this subsection "threat of force, injury or detriment" includes a threat to inform directly or indirectly an official of the Occupying Power of the refusal of the debtor to make payment."

In view of the provisions of sub-section (1) I have no doubt that the plantiffs, in order to succeed under sub-section (2) (c), must satisfy the Court that the payment was not caused by duress or coercion. The definition of "duress or coercion" for the purposes of section 4 of the Ordinance is very wide. It includes a threat of detriment offered to a debtor which in the opinion of the Court is of such a nature as to render the payment an involuntary act, and a "threat of force, injury or detriment" is defined as including a threat to inform directly or indirectly an official of the Occupying Power of the refusal of the debtor to make payment. Dr. Withers-Payne contended that if the mere threat to inform an official of the refusal of the debtor to pay satisfied the definition, then *a fortiori* a demand made by the official himself must come within the definition. There is great force in this argument, although I am not prepared to accept it as a general proposition by reason of the words "which in the opinion of the Court was of such a nature" in the earlier part of the sub-section. It seems to me to be clear from those words that each case must be considered in the light of the particular circumstances. Nevertheless, in view of the fact that a threat to inform an official is itself duress or coercion, where a demand is made by such an official, it will not need much more to satisfy the Court that it is of such a nature as to render the payment involuntary.

I have no doubt that in the circumstances of the Japanese Occupation a threat by any Japanese official to send a debtor to the Kempetai was a very dire and terrifying threat; and although it is not strictly necessary for me to go so far as to decide whether, if the burden of proof had been upon the defendants, they would have succeeded in establishing a threat of detriment of such a nature as to render their payments involuntary acts, I am inclined to think that they did. The plaintiffs are thus very far from having discharged the onus of satisfying me that there was no duress or coercion. Bearing in mind what has been said above as to demands by Japanese officials and bearing in mind also that the general burden is on the plaintiff to bring himself within the provisions of sub-section (2) of the section, I hold that the plaintiffs in this case have not established, by a preponderance of evidence in their favour, that no duress or coercion was brought to bear upon the defendants and their claim must therefore fail.

Action dismissed.

BUI DIN LAN v. SIM KIM ENG

[App. Civ. Juris. (Abbott, J.) July 12, 1951]

[Malacca — Civil Appeal No. 2 of 1951]

Landlord and Tenant — Control of Rent Ordinance, 1948, s. 12 — Rent in arrears for more than fourteen days — Waiver of past irregularities in payment.

In this case the appellant (landlord) claimed possession on the ground that the respondent (tenant) was in arrears with the rent for the month of August 1950, beyond the fourteen-day-period. The rent for August

was tendered on the 30th of September 1950. The respondent contended and the learned Magistrate held that by, consistently accepting the rent in arrears, the landlord had consented in a variation of the agreement — that a new contract had come into existence between the parties as regards the time of payment.

Held, that when an act has been done periodically, the fact that it has been done irregularly in the past does not, unless the variation of the agreement can be inferred, justify the assumption that the irregularity will be waived in future and in all cases such as the present one, the existence of a novated agreement can only be established upon proof which goes higher and beyond mere indulgence on the part of the landlord.

Case referred to :—

(1) *Bird v. Hildage* (1947) 2 All E.R. 7; (1948) 1 K.B. 91.

APPEAL from the Magistrate's Court, Jasin.

Goh Tiow Wan for the appellant.

C. S. Jayaswal for the respondent.

Cur. Adv. Vult.

Abbott, J. : — The appellant is the owner of certain premises which were let to the respondent on a monthly tenancy at a rent of $38 a month payable in arrear. In the lower court the appellant claimed possession of the premises on the ground that the respondent was in arrear with the rent for the month of August last — beyond the fourteen-day-period allowed by the proviso to section 12 of the Control of Rent Ordinance, No. 6 of 1948. The rent for August was, in fact, tendered on the 30th of September. The respondent was already a tenant of the premises when the appellant acquired them in June 1948 and thereafter the appellant consistently allowed the rent to be paid two months in arrears each monh. The learned Magistrate, in giving judgment in favour of the respondent, held that, by consistently accepting the rent in arrear, had consented in a variation of the agreement — that a new contract had come into existence between the parties as regards the time of payment. There was no evidence to show otherwise than that such acceptance was by way of indulgence and the decision of this court must be given in the light of decision in *Bird v. Hildage*[1]. In all cases such as the present one, the existence of a novated agreement can only be established upon proof which goes higher and beyond mere indulgence on the part of the landlord. The appeal must be allowed.

Appeal allowed.

PUBLIC PROSECUTOR v. YONG AH PEONG AND 15 ORS.

[App. Crim. Juris. (Abbott, J.) May 23, 1951]

Emergency Regulations, 1948, regulation 7 — Curfew — Persons found within doors of non-residential premises or premises where residential accommodation not normally provided — "Within doors" — "Shall remain within doors" — Construction of — Burden of proof. of.

In any case where a person is found by night in a curfew area outside his own doors and in premises wherein guest accommodation is not normally provided there is a burden upon that person to prove that he intended and had been permitted to pass the night there.

CASE STATED by the Magistrate of Malacca for the opinion of the High Court.

The facts appear sufficiently from the judgment.

Abbott, J. : — This is a case stated by the Magistrate of Malacca for the opinion of the High Court. The facts shortly are as follows. The residents of Jasin are under curfew between the hours of 7 p.m. and 5.30 a.m. by virtue of an order made in that behalf under the authority of regulation 7 of the Emergency Regulations, 1948. The regulation, read in conjunction with the order, requires that every person affected by the order "shall remain within doors" between the specified hours. During the night of the 15th of May last sixteen persons (the Accused) were found playing cards in a coffee shop; they were prosecuted before the Magistrate with having broken curfew and acquitted on the ground that they were, in fact, "within doors" notwithstanding that the doors were not their own. In the view of this Court the case was not correctly decided — the expression "shall remain within